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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,404

01/27/2004

Karl David McAllister

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WHIRLPOOL PATENTS COMPANY - MD 0750
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EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1746

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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31 DAYS

01/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/766,404

Applicant(s)

MCALLISTER ET AL.

Examiner

Joseph L. Perrin, Ph.D.

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

There are duplicate claims 31. Accordingly, misnumbered claims 31-39 have been renumbered as claims 32-40.

Election/Restrictions

2. This application contains claims directed to the following patentably distinct species:

Varying Oscillations of the Wash Chamber

- A. oscillating by time-varying oscillations (claims 1-11)
- B. oscillating by speed varying oscillations (claims 12-24)
- C. oscillating and pausing by time-varying pauses (claims 25-32)
- D. oscillating by stroke angle-varying oscillations (claims 33-40)

If A. selected, elect one from each subspecies:

- I. Oscillating Periods – Time-Varying Oscillations

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- a. time-varying oscillations varying each sequential period (claim 2)
- b. time-varying oscillations varying bi-modally after a plurality of sequential periods (claim 3)
- c. time duration of the oscillations selected for each period (claim 4)

II. Period Time Duration – Time-Varying Oscillations

- a. randomly selected (claim 5)
- b. preselected (claim 6)

III. Oscillation – Time-Varying Oscillations

- a. symmetric (claim 7)
- b. asymmetric (claim 8)

IV. Adjusting Time-Varying Oscillations – Time-Varying Oscillations

- a. responsive to type of items (claim 10)
- b. responsive to amount of the items (claim 11)

If B. selected, elect one from each subspecies:

V. Angle of Rotation – Speed Varying Oscillations

- a. remains fixed throughout the wash cycle (claim 13)
- b. varies throughout the wash cycle (claim 14)

VI. Length of Pause – Speed Varying Oscillations

- a. identical (claim 16)
- b. varies (claim 17)

VII. Speed of Rotation – Speed Varying Oscillations

- a. changes at specific fixed time intervals (claim 18)
- b. changes at varying time intervals (claim 19)
- c. varies randomly (claims 20-21)
- d. varies according to a predetermined pattern (claim 22)
- e. changes upon occurrence of a specific event (claims 23-24)

If C. selected, elect one from each subspecies:

VIII. Oscillating Periods – Time-Varying Pauses

- a. time-varying pauses varying each sequential period (claim 26)
- b. time-varying pauses varying bi-modally after a plurality of sequential periods (claim 27)
- c. time duration of the pauses selected for each period (claim 28)

IX. Period Time Duration – Time-Varying Pauses

- a. randomly selected (claim 29)
- b. preselected (claim 30)

X. Oscillation Pauses – Time-Varying Pauses

- a. symmetric (claim 31)
- b. asymmetric (claim 32)

If D. selected, elect one from each subspecies:

XI. Oscillating Periods – Stroke Angle-Varying Oscillations

- a. oscillations varying each sequential period (claim 34)
- b. oscillations varying bi-modally after a plurality of sequential periods (claim 35)
- c. stroke angle of each oscillation selected for each period (claim 36)

XII. Period Stroke Angle – Stroke Angle-Varying Oscillations

- a. randomly selected (claim 37)
- b. preselected (claim 38)

XIII. Oscillation – Stroke Angle-Varying Oscillations

- a. symmetric (claim 39)
- b. asymmetric (claim 40)

3. The species are independent or distinct because each species and corresponding subspecies contain different modes of operation, are mutually exclusive,

and do not appear to be obvious variants. Moreover, there would be a serious burden on the Examiner to search all possible combinations of species-subspecies as claimed.

4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (A.-D.) and subspecies (I.-XIII.) from each corresponding subspecies group) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

5. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

6. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.
MPEP § 809.02(a).

7. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

8. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not

distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.


9. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1746

JLP